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MAY 1 7 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

May 17, 1995

BY HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: MM Docket Nos. 94-150, 92-51, 87-154
Attribution of Broadcast Interests

Dear Mr. Caton:

Transmitted herewith on behalf of the Local Station Ownership Coalition are an original and four (4) copies of its Comments in the above-referenced consolidated proceeding.

Should any question arise concerning this matter, please communicate with this office.

Very truly yours,

FLETCHER, HEALD & HILDRETH, P.L.C.

Patricia A. Mahoney

Patricia A. Mahoney
Counsel for the
Local Station Ownership Coalition

Enclosures

cc: Chairman Reed E. Hundt
Commissioner James H. Quello
Commissioner Anderw C. Barrett
Commissioner Rachelle B. Chong
Commissioner Susan Ness

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MAY 17 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Review of the Commission's Regulations Governing Attribution of Broadcast Interests	)	MM Docket No. 94-150
	)	
Review of the Commission's Regulations and Policies Affecting Investment in the Broadcast Industry	)	MM Docket No. 92-51
	)	
Reexamination of the Commission's Cross-Interest Policy	)	MM Docket No. 87-154

Directed to: The Commission

COMMENTS

The Local Station Ownership Coalition ("LSOC"), by its attorneys, hereby respectfully submits its Comments in response to the Notice of Proposed Rule Making ("NPRM"), FCC 94-324 (released January 12, 1995), in the above-captioned consolidated proceeding:

LSOC is a broad-based coalition of 17 broadcast groups[1] that include the

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[1] LSOC includes the following broadcast groups: ABRY Communications headquartered in Boston, Massachusetts; Act III Broadcasting, Inc., headquartered in New York, New York; Argyle Television Holdings, Inc., headquartered in San Antonio, Texas; Blade Communications, Inc., headquartered in Toledo, Ohio; Clear Channel Television Licenses, Inc., headquartered in Franklin, Tennessee; Ellis Communications headquartered in Atlanta, Georgia; Fant Broadcasting Companies headquartered in Birmingham, Alabama; Granite Broadcasting Corporation, headquartered in New York, New York; Kelly Broadcasting Co. headquartered in Sacramento, California; LIN Television Corporation headquartered in Providence, Rhode Island; Malrite Communications Group, Inc., headquartered in Cleveland, Ohio; Outlet Communications, Inc., headquartered in Cranston, Rhode Island; Pappas Telecasting Companies headquartered in Visalia,

licensees of more than 50 television stations, independents and network affiliates, in markets of varying sizes across the United States. These broadcast groups have joined together in a coalition because they are united in a common goal - reform of the commission's local ownership rule.

LSOC's members represent a broad spectrum of television licensees across the country. Based on their experience in operating television stations in varying market sizes and their experience with the current problems and economic conditions affecting the broadcasting industry, the members of LSOC have on this date filed Comments in MM Docket 91-221, in response to the Further Notice of Proposed Rule Making ("FNPRM"), FCC 94-322 (released January 17, 1995). In those Comments, LSOC urges the Commission to amend its local ownership rule and to recognize, as the Commission has with respect to radio local marketing agreements and time brokerage agreements (collectively referred to herein as "LMAs"), that LMAs involving television stations serve the public interest and should be permitted to continue. Additionally, LSOC asks the Commission to permit the renewal of LMAs involving television stations and to grandfather all existing such agreements that were or will be executed as of the effective date of the rules adopted in that proceeding. **LSOC also urges that local marketing agreements not be attributable ownership interests,** as they are in radio, unless the television local ownership rule is amended as LSOC proposes. Otherwise, the recognized public interest benefits of such agreements would be lost, since a

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California; Providence Journal Broadcasting Corporation headquartered in Providence, Rhode Island; River City License Partnership, headquartered in St. Louis, Missouri; Sinclair Broadcast Group, Inc., headquartered in Baltimore, Maryland; and Waterman Broadcasting Corp. headquartered in Fort Myers, Florida.

decision to attribute them as ownership interests but not to permit ownership of more than one television station with overlapping Grade B or Grade A contours would effectively leave few markets in which a local marketing agreement could be effectuated.

In its NPRM, slip op. at 8, ¶ 11, the Commission referred to the television ownership proceeding, MM Docket 91-221, and specifically indicated that it would review the comments filed in that proceeding in conjunction with the comments received in the instant proceeding to assure a coordinated approach to the three proceedings. Attached hereto is a copy of LSOC's Comments (without the exhibits) filed simultaneously herewith in MM Docket 91-221. LSOC incorporates those comments herein by reference and requests that they be considered in this proceeding as well, particularly as they relate to time brokerage, local marketing, and other joint venture agreements.

Respectfully submitted,

THE LOCAL STATION OWNERSHIP COALITION

By: Patricia A. Mahoney

Richard Hildreth
Vincent J. Curtis, Jr.
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Its Attorneys

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May 17, 1995

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Review of the Commission's Regulations Governing Television Broadcasting	))	MM Docket No. 91-221
	)	
Television Satellite Stations Review of Policy and Rules	))	MM Docket No. 87-8

Directed To: The Commission

COMMENTS

THE LOCAL STATION
OWNERSHIP COALITION

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May 17, 1995

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Review of the Commission's Regulations Governing Television Broadcasting	)	MM Docket No. 91-221
	)	
	)	
Television Satellite Stations Review of Policy and Rules	)	MM Docket No. 87-8
	)	

Directed To: The Commission

COMMENTS

SUMMARY

The Local Station Ownership Coalition ("LSOC"), herein respectfully submits its Comments in response to the Further Notice of Proposed Rule Making ("FNPRM"), FCC 94-322 (released January 17, 1995), in the above-captioned consolidated proceeding. LSOC is a broad-based coalition of 17 broadcast groups[1] that include the licensees of

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[1] LSOC includes the following broadcast groups: ABRY Communications headquartered in Boston, Massachusetts; Act III Broadcasting, Inc., headquartered in New York, New York; Argyle Television Holdings, Inc., headquartered in San Antonio, Texas; Blade Communications, Inc., headquartered in Toledo, Ohio; Clear Channel Television Licenses, Inc., headquartered in Franklin, Tennessee; Ellis Communications headquartered in Atlanta, Georgia; Fant Broadcasting Companies, headquartered in Birmingham, Alabama; Granite Broadcasting Corporation, headquartered in New York, New York; Kelly Broadcasting Co. headquartered in Sacramento, California; LIN Television Corporation headquartered in Providence, Rhode Island; Malrite Communications Group, Inc., headquartered in Cleveland, Ohio; Outlet Communications, Inc., headquartered in Cranston, Rhode Island; Pappas Telecasting Companies headquartered in Visalia, California; Providence Journal Broadcasting Corporation headquartered in Providence, Rhode Island; River City License Partnership, headquartered in St. Louis, Missouri; Sinclair Broadcast Group, Inc., headquartered in Baltimore, Maryland; and Waterman Broadcasting Corp. headquartered in Fort Myers, Florida.

more than 50 television stations, independents and network affiliates, VHF and UHF, in markets of various sizes across the United States. These broadcast groups have joined together in a coalition because they are united in a common goal - reform of the Commission's local ownership rules and policies.

Based on their experience operating television stations of various market sizes, and because of their experience with the current problems and economic conditions affecting the broadcasting industry, the members of LSOC urge the Commission to amend its local ownership rule. Such action is critical to the future of television broadcasting, particularly to the continued survival of UHF television licensees. As LSOC demonstrates herein and in the attached economic study prepared by National Economic Research Associates, Inc. ("NERA"), the time has come for the Commission to amend its local ownership rule to permit the common ownership of two television stations in a market.

The Commission's local ownership rule for television no longer serves the purpose for which it was adopted, i.e., to foster competition and enhance diversity, and now actually frustrates those objectives, while at the same time diverse alternative media enjoy explosive growth and development unfettered by ownership restrictions or regulation. The changes proposed by LSOC will enhance, not endanger, competition and diversity, enabling television licensees to strengthen their competitive positions through combined resources and diversified program offerings.

Specifically, LSOC asks the Commission to amend its rules (1) to permit common ownership, operation, and control of two UHF television stations or one UHF and one VHF station within the same television market unless the Commission determines that permitting such ownership, operation, or control will harm competition or will harm the preservation of a diversity of voices in the local television market and (2) to permit common ownership, operation, or control of two VHF television stations within the same television market if the Commission determines that permitting such ownership, operation, or control will not harm competition and will not harm the preservation of a diversity of voices in the local television market.

Additionally, LSOC asks the Commission to permit the continuation and renewal of local marketing agreements involving television stations and to grandfather all existing such agreements that were or will be executed as of the effective date of the rules adopted in this proceeding. Moreover, LSOC urges that local marketing agreements not be attributable ownership interests, as they are in radio, unless the television local ownership rule is amended as LSOC proposes. Otherwise, the public interest benefits of such agreements would be lost, since a decision to attribute them as ownership interests but not to allow common ownership of two stations in the same market would effectively leave few if any markets in which a local marketing agreement could be effectuated.

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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	)	
Television Satellite Stations Review of Policy and Rules	)	MM Docket No. 87-8
	)	

Directed To: The Commission

COMMENTS

The Local Station Ownership Coalition ("LSOC"), by its attorneys, hereby respectfully submits its Comments in response to the Further Notice of Proposed Rule Making ("FNPRM"), FCC 94-322 (released January 17, 1995), in the above-captioned consolidated proceeding:

I. INTRODUCTION

LSOC is a broad-based coalition of 17 broadcast groups[1] that include the

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[1] LSOC includes the following broadcast groups: ABRY Communications headquartered in Boston, Massachusetts; Act III Broadcasting, Inc., headquartered in New York, New York; Argyle Television Holdings, Inc., headquartered in San Antonio, Texas; Blade Communications, Inc., headquartered in Toledo, Ohio; Clear Channel Television Licenses, Inc., headquartered in Franklin, Tennessee; Ellis Communications headquartered in Atlanta, Georgia; Fant Broadcasting Companies, headquartered in Birmingham, Alabama; Granite Broadcasting Corporation, headquartered in New York, New York; Kelly Broadcasting Co. headquartered in Sacramento, California; LIN Television Corporation headquartered in Providence, Rhode Island; Malrite Communications Group, Inc., headquartered in Cleveland, Ohio; Outlet Communications, Inc., headquartered in Cranston, Rhode Island; Pappas Telecasting Companies headquartered in Visalia, California; Providence Journal Broadcasting Corporation headquartered in Providence, Rhode Island; River City License Partnership, headquartered in St. Louis, Missouri; Sinclair Broadcast Group, Inc.,

licensees of more than 50 television stations, independents and network affiliates, VHF and UHF, in markets of various sizes across the United States. These broadcast groups have joined together in a coalition because they are united in a common goal - reform of the Commission's local ownership rules and policies.

LSOC is in an excellent position to respond to the Commission's FNPRM, because its members represent a broad spectrum of television licensees across the country. Based on their experience operating television stations of various market sizes, and because of their experience with the current problems and economic conditions affecting the broadcasting industry, the members of LSOC urge the Commission to amend its local ownership rule. Such action is critical to the future of television broadcasting, particularly to the continued survival of UHF television licensees. As LSOC demonstrates herein and in the attached economic study prepared by National Economic Research Associates, Inc. ("NERA") (Exhibit 1), the time has come for the Commission to amend its local ownership rule to permit the common ownership of two television stations in a market. This needed revision to the Commission's television ownership rules has the support of Congressional leaders who have introduced legislation (H.R. 1556) that would mandate such a change.

The time has also come for the Commission to recognize, as it has with respect to radio local marketing agreements and time brokerage agreements (collectively referred to herein as "LMAs"), that LMAs involving television stations serve the public

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headquartered in Baltimore, Maryland; and Waterman Broadcasting Corp. headquartered in Fort Myers, Florida.

interest and should be permitted to continue. If the Commission chooses to regulate LMAs, the agreements should be required only to conform to minimal, reasonable FCC regulations that should be no more restrictive than the regulations adopted for radio LMAs.

As demonstrated herein, the Commission's current local ownership rule for television no longer serves the purpose for which it was adopted, i.e., to foster competition and enhance diversity, and now actually frustrates those objectives, while at the same time diverse alternative media enjoy explosive growth and development unfettered by ownership restrictions or regulation. The Commission itself has noted that the local marketplace is "far more competitive and diverse -- indeed, has been virtually transformed -- since the local ownership rules were first promulgated." FNPRM, ¶114. The changes proposed by LSOC will enhance, not endanger, competition and diversity, enabling television licensees to strengthen their competitive positions through combined resources and diversified program offerings.

II. LSOC's PROPOSALS

Specifically, LSOC asks the Commission to amend its rules (1) to permit common ownership, operation, and control of two UHF television stations or one UHF and one VHF station within the same television market[2] unless the Commission

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[2] By "market" LSOC means the Designated Market Area ("DMA") as defined by A.C. Nielsen, unless there are anomalies resulting from the ratings service construction of the DMA that render it unsuitable or unrealistic as the actual local advertising market or if a station operates on the fringes of a DMA. In either case an applicant should be permitted to demonstrate to the Commission that the relevant geographic market is not the DMA but some other actual geographic market.

determines that permitting such ownership, operation, or control will harm competition or will harm the preservation of a diversity of voices in the local television market and (2) to permit common ownership, operation, or control of two VHF television stations within the same television market if the Commission determines that permitting such ownership, operation, or control will not harm competition and will not harm the preservation of a diversity of voices in the local television market. LSOC distinguishes between UHF and VHF stations because of the inherent competitive disadvantages faced by UHF stations vis-a-vis their VHF competitors. UHF stations have generally reached a lesser number of homes and thus obtained a smaller share of viewers. While cable has helped UHF, the competitive disadvantages that UHF stations face have not been eliminated, as the attached NERA study reflects. See Ex. 1 at 15 n.19. Also, LSOC believes that in any instance where one of the stations is a "distressed" or "failed" station, or where a new station can be placed on air, the Commission ought to permit ownership of both stations without regard to whether the station is a UHF or VHF station.

Additionally, LSOC asks the Commission to permit the continuation and renewal of local marketing agreements involving television stations and to grandfather all existing such agreements that were or will be executed as of the effective date of the rules adopted in this proceeding. Moreover, LSOC urges that local marketing agreements not be attributable ownership interests, as they are in radio, unless the television local ownership rule is amended as LSOC proposes. Otherwise, the public interest benefits of such agreements would be lost, since a decision to attribute them as ownership interests but not to allow common ownership of two stations in the same market would effectively leave few if any markets in which a local marketing agreement could be effectuated.

III. CHANGE IS NEEDED NOW

The Commission's local ownership rule was adopted over 30 years ago to promote the maximum diversity of program service and viewpoints and to prevent undue concentration of economic power. See Amendment of Sections 73.35, 73.240 and 73.636 ("1964 Ownership Report and Order"), 45 F.C.C. 1476 (1964). As the following chart demonstrates, the number of broadcast stations providing television programming today, according to the FCC's own statistics,[3] **is more than double the number that were providing such services in 1964**:

	1964	1995	% Increase
Commercial TV	582	1,165	100%
Noncommercial TV	79	364	361%
TV Translators	1,415	4,664	230%
Low Power TV	0	1616	NC [1,616%]

It should also be noted that in 1964 there were only three television networks, with no realistic probability of a fourth network in sight. Today, of course, there are seven networks, including FOX, PBS, and the two new United Paramount Network ("UPN") and Warner Brothers ("WB") network services.

Also in 1964 there was a trend that disturbed the Commission: "the number of

[3]For 1964, statistics were taken from the Commission's Annual Report for Fiscal Year 1964. For 1995, statistics were taken from the "Broadcast Station Totals As Of March 31, 1995" press release issued by the Commission on April 19, 1995.

local printed news sources under competing ownership ha[d] suffered and [was] suffering a continuous decline," with fewer than 60 American cities having daily newspapers under competing ownership. See 1964 Ownership Report and Order, 45 F.C.C. at 1481 (emphasis in original). "Under these circumstances," the Commission reasoned, the impact of individual broadcast stations had become "significantly greater". Id. Thus, the Commission's concerns about competition, diversity, and undue concentration of economic power may have been understandable in 1964. However, the marketplace has dramatically changed over the last 30 years. Continuing in 1995 to adhere to the same rules adopted in 1964, when there were far fewer television stations and when the only other local mass media that competed with television stations for advertising and audience were radio and newspapers, is not understandable or in the public interest. If the Commission wants to ensure that local television stations are available to serve the need for local news and information, the Commission must allow single channel television broadcast stations some measure of relief so that they can compete with their multichannel competitors.

Today's local television stations face tremendous competition from television, radio, newspapers, and other services and sources never even contemplated in 1964. More importantly, there is no question that the near future offers an unimaginable selection of video programming (entertainment and non-entertainment) sources to the consumer at the local as well as the national level. As recognized by the FCC's staff four years ago, in the Office of Plans and Policy's Working Paper No. 26, Broadcast Television in a Multichannel Marketplace, 6 FCC Rcd 3996 (1991) ("OPP Paper"), the video marketplace is "highly competitive" and will only become more so. The number of television stations, particularly UHF stations, grew dramatically in the last decade,[4] as did the number of television signals available over the air in all markets.[5] By 1990, 94% of television households were in markets with five or more television stations available over the air. Additionally, television broadcasters were facing ever-increasing competition from other services, particularly cable.

When the OPP Paper was prepared, cable passed 90% of television households in the U.S.[6] By 1993, cable passed 96% of all television households.[7] In the Findings to the 1992 Cable Act, Congress found that "the cable television industry has become a dominant nationwide video medium." See Cable Television Consumer Protection and Competition Act of 1992, Sec. 2 (a)(3),106 Stat. at 1460 (1992) (hereinafter "1992 Cable Act"). Congress also specifically found:

> "(13) As a result of the growth of cable television, there has been a marked shift in market share from broadcast television to cable television services."

and

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[4] In 1980, there were 734 television stations; in 1990, there were 1,093. The number of commercial UHF stations grew by 150% between 1980 and 1990. See Office of Plans and Policy's Working Paper No. 26, Broadcast Television in a Multichannel Marketplace, 6 FCC Rcd 3996, 4011 & Table 3 (1991) ("OPP Paper").

[5] The number of off-air stations available to the median household increased from six in 1975 to ten in 1990. OPP Paper, 6 FCC Rcd at 3999.

[6] OPP Paper, 6 FCC Rcd at 3999-4001.

[7] See First Report in CS Docket No. 94-48, Implementation of Section 19 of the Cable Television Consumer Protection and Competition Act of 1992 ("1994 Video Competition Report"), 9 FCC Rcd 7442, 7451 ¶18 (1994).

"(14) Cable television systems and broadcast television stations increasingly compete for television advertising revenues. As the proportion of households subscribing to cable television increases, proportionately more advertising revenues will be reallocated from broadcast to cable television systems."

and

"(18) Cable television systems often are the single most efficient distribution system for television programming."

Id. at 1462.

In a recent publication of the Cabletelevision Advertising Bureau ("CAB"), 1994 Cable TV Facts ("CAB Facts"), 6-7, the following statistics were reported:

- In 1994, Americans will spend almost $22 billion on cable programming, almost two-and-a-half times the 1985 level.
- Total cable advertising revenues are expected to climb to $4.4 billion in 1994, a 359% increase since 1986.
- Cable penetration has reached 66% of all television homes, having grown 47% in only eight years.
- Cable penetration is projected to reach 72% by the year 2000.
- 95% of cable subscribers are able to receive 30 channels or more.

At the local market level, television broadcasters (which by FCC regulation can offer only a single channel of video program service) face an escalating threat from local multichannel competitors for the local ad dollar. **Unlike their multichannel competitors, the local single channel television broadcasters' only source of revenue is advertising.**[8] Also, unlike their multichannel competitors, commercial **over-**

[8] Stations affiliated with most of the national networks do generally receive direct cash compensation payments from their networks. These payments are in essence compensation for the carriage of network national advertising. In addition, some

the-air television broadcasters are the only video service providers that operate with multiple ownership restrictions. Moreover, the multichannel video business, particularly the cable business, is undergoing a fundamental change, one that virtually guarantees that cable will garner an increasing share of local advertising revenues.

For years, cable's share of local advertising revenues has not grown as quickly as its rapidly increasing penetration and viewership because of the fragmentation of ownership in local markets. Increasingly, however, cable operators have been creating market-wide "interconnects," capable of offering local spots on all or nearly all of the cable systems in a market.[9] At the same time, driven by the additional incentive to compete with the phone companies and provide a seamless local telephone service,[10] cable operators have been "clustering" at a rapid pace, buying or trading cable systems so that they cover local markets. As a result of its recent acquisitions of Cablevision Industries, Houston Industries, and Newhouse, for example, Time-Warner now has over 30 "clusters" in excess of 100,000 homes. In Memphis, Time-Warner commands 60% of the cable homes in the market, and 34% of the total homes in the market. In Reno, TCI commands 77% of cable and 52% of the total homes. Both have been aggressively acquiring cable systems in order to create super clusters. Testimony of

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stations have been able to negotiate cash payments from some cable operators for retransmission of their signals; but such payments represent a trivial portion of station revenues.

[9]Exhibit 2 hereto is a listing of 180 such cable interconnects from the 1994 Cable TV Facts ("CAB Facts"), published by the Cabletelevision Advertising Bureau ("CAB").

[10]See also, "Sprint, cable partners plan phone service," Broadcasting & Cable 39 (Apr.3, 1995).

Gary Chapman, President, LIN Television, Inc., on behalf of the LSOC before the Committee on Commerce of the U.S. House of Representatives, May 12, 1995, at 4, copy attached as Exhibit 3 hereto.

Driven by interconnects and clustering, cable's share of local advertising revenues is rising rapidly, hitting $600 million in 1993, an increase of 80% from 1990, and is projected to rise at a comparable rate for the foreseeable future. With the pressure of competition from the phone companies, satellites, and wireless cable, and with regulation of subscriber rates, cable MSOs can be expected to accelerate both clustering and their efforts to target local advertising as a primary source of future revenue growth. Id.

The OPP Paper also noted the increasing competition faced by television broadcasters from other video and information sources, such as wireless cable, low power television, motion pictures, video cassette recordings,[11] SMATV, and C-Band Satellites. These competing media sources do not face ownership restrictions such as are placed on television broadcasters. Moreover, competition has dramatically increased and diverse sources of programming have rapidly multiplied since the OPP Paper was prepared and released only four years ago.

For example, the OPP Paper was prepared before the initiation of high power direct broadcast satellite ("DBS") service. This new service already provides additional

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[11] One commenter in Docket CS 94-48, the Video Competition proceeding, has advised the Commission that as many as 84% of all television homes have videocassette recorders today. See 1994 Video Competition Report, 9 FCC Rcd at 7510.

competition and 150 channels of video programming[12] to every single market in the 48 contiguous United States (herein referred to as the "continental U.S.").[13] Although high powered DBS service was initiated less than a year ago, the one millionth DSS™ receive system (necessary to receive the DirecTv and USSB services) was shipped in April, 1995. See Hillebrand, "Sony Prices DBS Systems at $749," Satellite Business News 1, 30 (May 10, 1995). Primestar Partners, L. P. ("Primestar"), which offers a medium-power DBS service, has indicated that its goals are to have 400,000 units installed by the end of April, 1995, and one million installed by the end of the year. See "Primestar Says New TV Commercials Popular," Satellite Business News (May 10, 1995). As the Commission's First Report in CS Docket No. 94-48, Implementation of Section 19 of the Cable Television Consumer Protection and Competition Act of 1992, ("1994 Video Competition Report"), 9 FCCRcd 7442, 7475, ¶66 (1994), noted, demand for DBS receive equipment exceeds the supply. Subscribers to the new DBS service can only be expected to increase as other service providers launch their services and

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[12]A copy of the program offerings on DirecTv and USSB is attached as Exhibit 4. hereto.

[13]The Commission notes in the FNPRM at 51, n. 142, that the availability of home satellite dishes may be limited by zoning regulations and homeowner association rules. However, the Commission recently initiated a proceeding (IB Doc. No. 95-59) in which it proposes to change its policies on federal preemption of local land-use regulations that inhibit access to satellite communications. Also, the satellite industry is working on this problem and has been successful in convincing at least one community, Thousand Oaks, California, to change its ordinances once its officials actually saw the 18 inch DBS antenna. See City of Thousand Oaks, Resolution No. 95-1, Section VII - 18" Diameter and Smaller Dish Antenna, passed and adopted January 3, 1995.

additional equipment manufacturers begin selling systems.[14]

The publication Sky Trends: DTH Annual Report April '95, 2 (1995), published by the Satellite Broadcasting Communications Association and Media Business Corp., reports that, in the first three months of 1995, direct-to-home ("DTH") satellite services passed the three million subscribers mark, with C-Band services accounting for 2,277,000, DSS™ (high power DBS) accounting for over 500,000, and Primestar accounting for over 330,000. The publication quotes industry observers as predicting that 1995 sales could top $3.5 billion and subscribers could exceed 5 million.

Wireless cable, too, has grown dramatically even since the OPP Paper. Indeed, a recent issue of Broadcasting & Cable (May 1, 1995), carried on its cover the message, "After 22 Years, an overnight sensation, MMDS A.K.A. Wireless Cable." The issue's lead story, which was on wireless cable, opened with the sentence, "[t]hese are heady days for wireless cable operators." See "MMDS (wireless cable): A capital ideal," Broadcasting & Cable 16 (May 1, 1995). The article reported that Pacific Telesis ("PacTel") last month[15] paid $175 million for the stock and debt of the nation's fourth largest wireless operator,[16] and, in March, Bell Atlantic and Nynex invested $100

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[14]SONY recently announced that it will offer three DBS receive systems. See Communications Daily (May 10, 1995), at 12; "Sony Prices DBS Systems at $749," Satellite Business News 1, 30 (May 10, 1995).

[15]See also "PacTel joins wireless migration," Broadcasting & Cable 35 (Apr.24, 1995).

[16]According to the same story, PacTel decided to invest in the wireless business, even though it also is busy developing a broadband network that could offer video service by 1998 or 1999. PacTel expects to have 5 million homes hooked up to its network in San Jose, Los Angeles, Orange County, and San Diego by the year 2000;

million in another of the top ten wireless cable operators, with an option to purchase 45% of the company for a total investment of $300 million.[17] That company in turn plans to merge its system with another top ten company. Id. The report also stated that there are now seven major publicly traded wireless companies with a collective annual growth rate of about 175,000 new customers a year. Id. Most systems have a channel capacity of 33, which could be expanded up to 250 with digital technology. Id. at 16-18.

Moreover, hardly a day passes that one does not hear of new alliances, deals, and joint ventures being formed whereby video programming, including interactive programming, will be provided over telephone networks, computer online services[18], and CD ROM. Americans are no longer limited to the few options they had in 1964.

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but the company wanted to get into the market more quickly. PacTel plans to offer 100 channels of digital programming on its wireless cable system by late 1996. It believes that with wireless cable it will be able to reach 2.3 million additional homes that would not be reached by its planned broadband network. "MMDS (wireless cable): A Capital ideal," Broadcasting & Cable 16, 18 (May 1, 1995).

[17] See also "Bell Atlantic, Nynex purchase CAI wireless systems," Broadcasting & Cable 40 (Apr.3, 1995).

[18] See, e.g., "MCI, Murdoch Plan $2 Billion Media Alliance; Phone Giant Would Deliver Fox Programs," The Washington Post, A-1 (May 11, 1995); "Microsoft moves closer to interactive TV reality," and "Coming soon to a cable system near you: Microsoft online," Broadcasting & Cable 70, 74 (May 8, 1995); "CompuServe to deliver CNN programming to PCs, Broadcasting & Cable 34 (May 1, 1995); "Bells close Disney video services deal," Broadcasting & Cable 33 (Apr. 24, 1995); "Apple pushing into interactive TV market," Broadcasting & Cable 45 (Apr. 17, 1995); "Disney, Baby Bells about to be partners," Broadcasting & Cable 38 (Apr.3, 1995); "Dream date: Microsoft and Dream Works SKG, "Broadcasting & Cable 42 (Mar. 27, 1995); Broadcasting & Cable now has a separate section, "Telemedia Week, the Interactive World of Video, Voice and Data" in each weekly issue.

They are no longer receiving news and information by newspaper, television, and radio alone. They have numerous, multichannel and multimedia sources of information available; and the sources they have are multiplying at a sky rocketing pace.

Thus, artificial ownership restrictions on local television stations are obviously no longer necessary or justifiable to foster competition and diversity in the provision of video programming. Rather, marketplace conditions and technological advances cannot help but ensure increased competition and diversity, a necessary result of the dramatic technological and marketplace changes facing television broadcasters. Only free over-the-air television provides **local** news and informational programming. If the Commission is committed to preserving free over the air television broadcasting, and local television service, it must ease up on the restrictions it places on television broadcasters that hinder their ability to compete with the multiplicity of other services available to advertisers and consumers.

IV. PERMITTING OWNERSHIP OF TWO TV STATIONS IN THE SAME MARKET WILL PROMOTE COMPETITION

In its Notice of Inquiry, 6 FCC Rcd 4961 (1991) (NOI), in this (MM Docket 91-221) proceeding, the Commission acted in response to its OPP Paper , 6 FCC Rcd 3996 (1991), in which the Commission's staff documented the uncertain future facing over-the-air television broadcasters, particularly smaller-market, independent, and UHF stations. As a result of comments received in response to the NOI, the Commission proposed a number of policy and rule changes, including changes in its television ownership rules, in a Notice of Proposed Rulemaking, 7 FCC Rcd 4111 (1992)

("NPRM"), in 1992. Despite the record established in that proceeding, the Commission's recent FNPRM proposes "a new analytical framework within which to evaluate" its ownership rules applied to television stations. FNPRM, slip op. at 1, ¶ 1.

With respect to the local ownership rule, the Commission's FNPRM analysis looks at how relaxation of the rule will affect competition in the market for delivered video programming, the market for advertising, and the market for video program production, as well as the effects on diversity. As discussed below, LSOC believes that the relevant analysis of the effect on competition should be an antitrust analysis confined to the local advertising market, since it is that market that clearly drives the stations' competitive behavior. Even so, LSOC addresses the program delivery and program production markets as well.

A. Effects on the Market for Advertising.

In the attached economic study, NERA provides an analysis of the extent to which the Commission's current and proposed rules prohibiting the common ownership of local television stations are likely to support the FCC's stated competition and diversity objectives and considers whether there are alternative rules or frameworks that might better promote these objectives. NERA demonstrates that the FCC's competition objectives would be better served by applying standard antitrust principles and methods to analyzing broadcast television station acquisitions, referred to by NERA as "mergers," rather than using ad hoc technical rules, such as a flat prohibition on dual ownership whenever there is a Grade B or Grade A overlap. An across-the-board prohibition ignores the competitive conditions in the actual markets within which those stations operate and compete, which for most television stations would be their Designated Market Area (DMA), as defined by A.C. Nielsen. Rather than relying upon such technical factors, the Commission should adopt an antitrust approach to its competition objectives and concern itself with disallowing only combinations that create undue market power. When a traditional antitrust analysis is used, it is clear that, even under a worst case scenario, there would be no harm to competition if the changes proposed by LSOC are adopted.

The attached economic analysis also addresses the relevant market for assessing local market acquisitions under a proposed rule change, as the Commission's FNPRM requests. While the Commission's FNPRM proposes examining three separate relevant markets, advertising, video program production, and video program delivery, NERA's economic analysis demonstrates that the relevant product market is really the local advertising market. That is the market that clearly drives the stations' competitive behavior, since commercial television stations earn income almost exclusively from advertising sales. All advertising media create a product - an audience - that is marketed to advertisers. The production and delivery of video programming, whether news or entertainment, are only the means by which stations "produce" the audience that they in turn "sell" to advertisers, in the same way that other non-media firms assemble various inputs to create a product that is sold to their ultimate customers.

Broadcast television stations compete, as suppliers of advertising time, for the patronage of local, regional, and national advertisers. Although little data is available